

CONTRACT #1
RFS # 347.01-11011
FA # Pending

Revenue

VENDOR:
Multistate Tax Commission
(MTC)



PHIL BREDESEN
Governor

STATE OF TENNESSEE
DEPARTMENT OF REVENUE
ANDREW JACKSON STATE OFFICE BUILDING
NASHVILLE, TENNESSEE 37242

REAGAN FARR
Commissioner

To: M.D. Goetz, Jr., Commissioner – Department of Finance and Administration

From: Reagan Farr, Commissioner – Department of Revenue

Re: Explanation for Submission of Non-Competitive Competitive Contract Request
Less Than 60 Days Before Contract Start Date - RFS 34701-11011

Date: February 18, 2010

Section 95 of Public Chapter 530 (2009) authorizes the Department of Revenue to enter into a contract to participate in the Multistate Tax Commission (MTC) Joint Audit Program. By becoming a member of the MTC Joint Audit Program, the MTC will operate as an arm of the Department of Revenue and will perform mutually agreed upon audits as though they were part of the department's own audit staff. The MTC will ensure that its audit staff is adequately trained in the applicable tax laws of the State and will be responsible for forwarding their findings and recommendations to the department for the assessment and collection of taxes determined to be due at the completion of the audit.

The MTC normally bills states in February of each year. They have allowed the department to become involved in the program in anticipation of formal participation through the approved contract process. The Commissioner has signed authorizations, pursuant to the Tenn. Code Ann. Sections 67-1-102 and 1704, for the department to participate in 7 audits which are now underway. MTC is not a typical state vendor and it took time for DOR to derive contract terms acceptable to both parties.

Your consideration of this request will be greatly appreciated.

RECEIVED

FEB 24 2010

FISCAL REVIEW

Supplemental Documentation Required for 4
Fiscal Review Committee

*Contact Name:	John Lamar	*Contact Phone:	615-532-8969		
*Original Contract Number:	New, contract # assigned by Edison	*Original RFS Number:	34701-11011		
Edison Contract Number: <i>(if applicable)</i>		Edison RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	4/1/10	*Current End Date:	6/30/12		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:			Department of Revenue		
*Division:			Audit		
*Date Submitted:			2/24/10		
*Submitted Within Sixty (60) days:			No		
<i>If not, explain:</i>			Please see attached		
*Contract Vendor Name:			Multistate Tax Commission		
*Current Maximum Liability:			\$490,023		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:10	FY:11	FY:12	FY:	FY	FY
\$76,566	\$172,274	\$241,183	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY: N.A.	FY: N.A.	FY: N.A.	FY: N.A.	FY: N.A.	FY: N.A.
\$0	\$0	\$0	\$0	\$0	\$0
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			New Contract - Not Applicable		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					
*Contract	State:	\$490,023	Federal:		

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Fiscal Review Committee

Funding Source/Amount:				
Interdepartmental:			Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
Method of Original Award: <i>(if applicable)</i>				
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$76,566 (yet to be invoiced as of this submission)		

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Fiscal Review Committee

<p>For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.</p>					
<p>If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.</p>					
<p>Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.</p>					
Deliverable description:	FY:10	FY:11	FY:12	FY:	FY:
Taxpayer Auditing Services	\$76,566	\$172,274	\$241,183		
<p>Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.</p>					
Deliverable description:	FY:10	FY:11	FY:12	FY:	FY:
Taxpayer Auditing Services (1)	\$120,000	\$170,000	\$210,000		
<p>Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.</p>					
Proposed Vendor Cost: (name of vendor)	FY:10	FY:11	FY:12	FY:	FY:
In-house	\$217,500	\$217,500	\$217,500		
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

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of vendor)					

Note:

1. Based upon MTC experience, a realistic rate of return after three years is 8 to 1.
An 8 to 1 return after year 3, based upon the current fee, is about \$3,920,200.
Potential new dollars from the first three years is conservatively estimated to
allow time to complete initial audits.

NON-COMPETITIVE CONTRACT REQUEST

This request is NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant. **cy10-129**

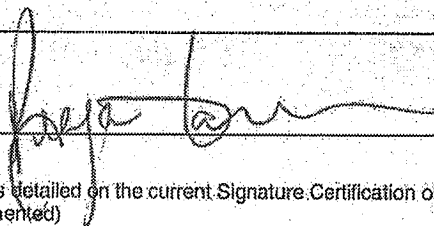
APPROVED

MD Gentry 3/4/10

COMMISSIONER OF FINANCE & ADMINISTRATION

1	REQUEST RFS #	34701-11011
2	PROCURING AGENCY	Department of Revenue
3	SERVICE	Tax Auditing Services through MTC Joint Audit Program
4	APPROVAL CRITERIA (select one)	<input checked="" type="checkbox"/> non-competitive negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service
5	PROPOSED CONTRACTOR	Multistate Tax Commission
6	CONTRACT BEGIN DATE (attach explanation if < 60 days after F&A receipt)	April 1, 2010
7	CONTRACT END DATE (with ALL options to extend exercised)	March 31, 2015
8	MAXIMUM CONTRACT COST (with ALL options to extend exercised)	\$490,023
9	SERVICE DESCRIPTION <p>Section 95 of Public Chapter 530 (2009) authorizes the department to enter into a contract to participate in the Multistate Tax Commission Joint Audit Program. Tennessee is already an Associate and Project Member of the MTC. By becoming a member of the MTC Joint Audit Program, the MTC will operate as an arm of the Department of Revenue and will perform mutually agreed upon audits as though they were part of the department's own audit staff. The MTC will ensure that its audit staff is adequately trained in the applicable tax laws of the State and will be responsible for forwarding their findings and recommendations to the department for the assessment and collection of taxes determined to be due at the completion of the audit.</p> <p>The department will participate with other member states in the selection of the audit candidates. The department will also make the decision as to whether or not to participate in a given audit and how to act upon the audit results. The department will also participate in the Contractor's Audit Committee and its oversight subcommittee to guide the program and ensure that it is responsive to the State of Tennessee and other member state needs. A single MTC audit takes the place of separate and duplicative audits by member states, and provides obvious economies of scale to the states. A joint audit is also a good way to achieve uniformity among states with similar laws and regulations in the treatment of income or transactions reviewed in a particular audit.</p>	
10	EXPLANATION OF NEED FOR OR REQUIREMENT PLACED ON THE STATE TO ACQUIRE THE SERVICE <p>Section 95 of Public Chapter 530 (2009) authorizes the department to enter into a contract to participate in the Multistate Tax Commission Joint Audit Program. The number of Tennessee tax accounts subject to audit has continued to increase notably each year even prior to Public Chapter 530 (2009) shifting the administration of Tennessee Business Tax to the state. Participation in the MTC Joint Audit Program will assist Tennessee by offering a cost-effective method for ensuring compliance among additional large multistate taxpayers beyond those already actively being pursued by the Department. The Joint Audit Program will also assist Tennessee in identifying</p>	

1	REQUEST RFS #	34701-11011
<p>Inconsistent reporting to different states by multistate taxpayers. Tennessee, like other states, will also be in a position use the joint audit program as a tool for adapting existing laws to new circumstances and industry practices that arise continuously, thereby assisting the state in maintaining its sales and use and franchise, excise tax bases. Based upon the MTC experience, a conservative rate of return after year 3 is about \$3,920,200.</p>		
11	HAS THE PROCURING AGENCY EVER BOUGHT THE SERVICE BEFORE ? <input type="checkbox"/> YES or <input checked="" type="checkbox"/> NO IF SO, WHAT PROCUREMENT METHOD WAS USED ?	
12	NAME & ADDRESS OF THE CONTRACTOR'S PRINCIPAL OWNER(S) (NOT required for a TN state education institution) Joe Huddleston, Executive Director Multistate Tax Commission 444 N. Capitol St. NW, Suite 425 Washington, DC 20001 Phone: 202-624-8699 Fax: 202-624-8819 E-mail: mtc@mtc.gov Website: www.mtc.gov	
13	EVIDENCE OF THE CONTRACTOR'S EXPERIENCE & LENGTH OF EXPERIENCE PROVIDING THE SERVICE The MTC was created by the Multistate Tax Compact in 1967 and has been operating its Joint Audit Program since 1972. Currently, 22 states participate in the income tax audit program and 18 in the sales/use tax audit program.	
14	OFFICE FOR INFORMATION RESOURCES SUPPORT (required for information technology service) <input type="checkbox"/> ATTACHED or <input checked="" type="checkbox"/> NOT APPLICABLE (N/A only to non-information technology service & THDA)	
15	eHEALTH INITIATIVE SUPPORT (required for health-related professional, pharmaceutical, laboratory, or imaging service) <input type="checkbox"/> ATTACHED or <input checked="" type="checkbox"/> NOT APPLICABLE	
16	HUMAN RESOURCES SUPPORT (required for state employee training service) <input type="checkbox"/> ATTACHED or <input checked="" type="checkbox"/> NOT APPLICABLE	
17	DESCRIPTION OF EFFORTS TO IDENTIFY REASONABLE, COMPETITIVE, PROCUREMENT ALTERNATIVES The MTC is a unique intergovernmental agency that was specifically created by the Multistate Tax Compact.	
18	JUSTIFICATION FOR NON-COMPETITIVE NEGOTIATION RATHER THAN A COMPETITIVE PROCESS The MTC Joint Audit Program offers a unique cost-effective means of expanding essentially department audit activities. Both the MTC and Tennessee are signatories to the 1993 Federation of Tax Administrators Uniform Exchange of Information Agreement. Additionally, Section 96 of Public Chapter 530 (2009) specifically authorizes the disclosure of confidential returns, tax information, and tax administration information to the MTC for the exclusive purpose of participating in the MTC Joint Audit Program. There are no competitors or alternative multistate programs in which Tennessee could participate.	

1 REQUEST RFS #	34701-11011
 3/1/10	
AGENCY HEAD SIGNATURE & DATE (MUST be signed & dated by the ACTUAL procuring agency head as detailed on the current Signature Certification on file with OCR—signature by an authorized signatory acceptable only if exigent circumstances documented)	



CONTRACT

(FA-type fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Agency Tracking # 34701-11011		Edison ID 00000000000000000000XXXXX			
Contractor Multistate Tax Commission		Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 43-0918818			
Service Tax auditing services					
Contract Begin Date 4/1/10		Contract End Date 6/30/12			
		Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor			
CFDA #(s)					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2010	\$76,566				\$76,566
2011	\$172,274				\$172,274
2012	\$241,183				\$241,183
2013	\$0				\$0
2014	\$0				\$0
2015	\$0				\$0
TOTAL:	\$490,023				\$490,023
American Recovery and Reinvestment Act (ARRA) Funding - <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
OCR USE FA		Agency Contact & Telephone # John Lamar (615) 532-8969			
		Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)			
		Speed Code RV00000127		Account Code 70803000	
Contractor Ownership/Control <input type="checkbox"/> African American <input type="checkbox"/> Person w/ Disability <input type="checkbox"/> Hispanic <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input type="checkbox"/> Asian <input type="checkbox"/> Female <input type="checkbox"/> Native American <input checked="" type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other					
Contractor Selection Method <input type="checkbox"/> RFP <input type="checkbox"/> Competitive Negotiation * <input type="checkbox"/> Alternative Competitive Method * <input checked="" type="checkbox"/> Non-Competitive Negotiation * <input type="checkbox"/> Other *					

***Procurement Process Summary**

The MTC Joint Audit Program offers a unique cost-effective means of expanding essentially department audit activities. Both the MTC and Tennessee are signatories to the 1993 Federation of Tax Administrators Uniform Exchange of Information Agreement. Additionally, Section 96 of Public Chapter 530 (2009) specifically authorizes the disclosure of confidential returns, tax information, and tax administration information to the MTC for the exclusive purpose of participating in the MTC Joint Audit Program. There are no competitors or alternative multistate programs in which Tennessee could participate.

FISCAL REVIEW AND OCR DRAFT

CONTRACT BETWEEN THE STATE OF TENNESSEE, DEPARTMENT OF REVENUE AND MULTISTATE TAX COMMISSION

This Contract, by and between the State of Tennessee, Department of Revenue, hereinafter referred to as the "State" and Multistate Tax Commission, hereinafter referred to as the "Contractor," is for the provision of tax auditing services, as further defined in the "SCOPE OF SERVICES."

The Contractor is an intergovernmental state tax agency created by the Multistate Tax Compact in 1967.

Contractor Federal Employer Identification or Social Security Number: 43-0918818
Contractor Place of Incorporation or Organization: Washington, D.C.

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.1.a. The Contractor agrees to operate as an arm of the State through the Contractor's Joint Audit Program. The Contractor agrees that its audit staff will perform mutually agreed upon audits as though they were part of the State's own audit staff. The Contractor will ensure that its audit staff is adequately trained in the applicable tax laws of the State and will be responsible for forwarding their findings and recommendations to the State for the assessment and collection of taxes determined to be due at the completion of the audit.

The State will participate with other member states in the selection of the audit candidates. The State will also make the decision as to whether or not to participate in a given audit and how to act upon the audit results. The State will also participate in the Contractor's Audit Committee and its oversight subcommittee to guide the program and ensure that it is responsive to the State and other member state needs.

A.2. The Contractor shall audit the taxpayers mutually agreed upon by the parties for the purpose of establishing the sales and use or corporate income tax liability thereof, as the case may be. Except as may be specifically agreed to by the parties hereto, the normal audit period to be reviewed shall be three years in the case of income tax and to the extent of the applicable statute of limitation years (up to four years) in the case of sales and use tax.

A.3. Unless determined otherwise by the State and the Contractor prior to the commencement of an audit, any and all audits authorized hereunder shall be conducted substantially in accordance with the Multistate Tax Commission (MTC) Audit Manuals which have been reviewed and are hereby approved by the State for the purpose of this Agreement. Notwithstanding the foregoing, the State shall be entitled to supervise and direct the conduct of any and all aspects of the audits authorized hereunder with respect to the determination of taxpayer's liability to the State. If, however, in the exclusive judgment of the Contractor, such supervision or direction interferes or threatens to interfere with the audits of taxpayer with respect to the MTC member states, the Contractor may elect, upon five days written notice, to terminate its agency relationship with respect to the audit(s) so affected or to take such other action as may be required to protect the interests of the MTC member states. In the event of such termination, the Contractor shall take reasonable efforts to assist the State in the State's continuation of the affected audit(s) by the State's own employees or other agents.

A.4. It is understood and agreed that after its initial contact of any given taxpayer agreed upon by the parties to be subject to audit hereunder by the Contractor, the Contractor may determine that it is

FISCAL REVIEW AND OCR DRAFT

not feasible to continue said audit or audits to completion. Such determination shall be made in the exclusive judgment of the Contractor, after consultation with a representative of the State. Upon making such a determination, the Contractor shall provide written notification thereof to the State.

- A.5. With respect to any audit candidates to be selected during the term of this Agreement, the State shall be polled with respect thereto in the identical manner that member states are polled. In addition, the State shall be entitled to fully participate in the vote on any and all issues brought before the MTC's Audit Committee including but not limited to the selection of audit candidates.
- A.6. Upon the timely request of the State to join an MTC audit, the State shall be required to execute and timely deliver to the MTC its written authorization of the MTC to audit the taxpayer on its behalf. Such written authorization shall be in substantially the form reflected in the attached Attachment 2. Failure to timely deliver said authorization shall preclude the State from joining said audit unless the MTC shall determine, in its exclusive judgment, to proceed on behalf of the State after the receipt of the State's authorization. A request and authorization shall be considered timely if the authorization is received by the MTC at least 5 days prior to the scheduled commencement of the audit.
- A.7. If, upon the date of termination hereof, any one or more audits in which the State is a party is not completed by the issuance of an audit report by the MTC, this Agreement shall be extended automatically until the date upon which the last audit report is issued for the State. No further payments shall be made by the State for the period of the extension.

B. CONTRACT TERM:

- B.1. This Contract shall be effective for the period commencing on April 1, 2010 and ending on June 30, 2012. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract, and shall be based upon payment rates provided for in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed four hundred ninety thousand and twenty-three dollars (\$490,023). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

FISCAL REVIEW AND OCR DRAFT

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
 - The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Taxpayer Auditing Services through April 1, 2010	\$ 76,566
Taxpayer Auditing Services through September 15, 2010	\$ 86,137
Taxpayer Auditing Services through February 15, 2011	\$ 86,137
Taxpayer Auditing Services through September 15, 2011	\$ 120,591.50
Taxpayer Auditing Services through February 15, 2012	\$ 120,591.50

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.
- The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Tennessee Department of Revenue
Audit Division
P.O. Box 190644
Nashville, TN 37219-0644
 - The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
 - Invoice/Reference Number (assigned by the Contractor);
 - Invoice Date;
 - Invoice Period (period to which all invoiced charges are applicable);
 - Contract Number (assigned by the State to this Contract);
 - Account Name: Department of Revenue & Audit Division
 - Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
 - Contractor Name;
 - Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
 - Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);

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- (10) Contractor Remittance Address;
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.
 - c. The Contractor understands and agrees that an invoice to the State under this Contract shall:
 - (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) not include any future work but will only be submitted for completed service; and
 - (3) not include sales tax or shipping charges.
 - d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
 - e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:**
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

FISCAL REVIEW AND OCR DRAFT

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment One, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and

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retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

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The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Stacy Gibson, Director, Audit Division
Tennessee Department of Revenue
P.O. Box 190644
Nashville, TN 37219-0644
Stacy.Gibson@tn.gov

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Telephone # 615-253-4868

FAX # 615-253-8305

The Contractor:

Les Koenig, Director, Joint Audit Program

Multistate Tax Commissioner

223 W. Jackson Blvd., Suite 604

Chicago, IL 60606-6911

lkoenig@mtc.gov

Telephone # 312-913-9150

FAX # 312-913-9151

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.

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- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

- E.6. Confidentiality of State Records. Strict standards of confidentiality of records of the State shall be maintained in accordance with the law. All material and information, regardless of form, medium, or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State, whether verbal, written, magnetic tape, cards or otherwise, shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor shall maintain the confidentiality of any "Return," "Tax Information" or "Tax Administration Information" as defined by Tenn. Code Ann. Sec. 67-1-1701, generated or acquired pursuant to this Contract. Such "Return," "Tax Information," or "Tax Administration Information" shall be protected as confidential by the Contractor in accordance with the requirements of Tenn. Code Ann. Sec. 67-1-1702 and other applicable laws and regulations. In addition to maintaining the confidentiality of any "Return," "Tax Information," or "Tax Administration Information," the Contractor shall also maintain the confidentiality of other information which it acquires from the State under the Contract that is marked "Confidential" and shall not disclose such information to any third party unless specifically authorized to do so in writing by the State.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the state's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first or second paragraphs of this section.

The Contractor's obligations under this section do not apply to information entering the public domain but not from a breach by the Contractor of this Contract or previously possessed by the contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract.

IN WITNESS WHEREOF,

MULTISTATE TAX COMMISSION:

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CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF REVENUE:

REAGAN FARR, COMMISSIONER

DATE

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ATTACHMENT One

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

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Attachment 2

AUDIT AUTHORIZATION

TO: [Name and Address of Taxpayer]

Pursuant to the Authority provided by Tenn. Comp. R. & Regs. 0620-3-3.03, I hereby constitute and appoint the Multistate Tax Commission, including its Executive Commissioner, its auditors and its employees, as my true and lawful agent and representative and request it to obtain access to and to examine and audit the tax information of the above-named taxpayer and any and all affiliated, subsidiary, and parent companies thereof, wherever situated, for the purpose of determining the correctness of any [income] [franchise] [sales] [use] tax liability of said business entity or entities to the State of Tennessee for the tax periods of _____.

The Multistate Tax Commission is hereby authorized to do all things necessary and proper to conduct said examination and audit, including, without limitation, the authority to:

1. Accept and/or execute on behalf of this State any waiver or waivers in a form agreed upon by the undersigned for the purpose of extending any statute of limitation of this State for the making of assessments or for the filing of claims for refunds.
2. Take such further action as may be necessary and incidental to the performance of the activities set forth above.

Dated this _____ day of _____, 20____

State of Tennessee

By: _____

Title: _____